Remarks

Claim 2 has been incorporated into claim 1. The claims have been amended to obviate the rejection under 35 USC 112.

Claim 7 has been amended to include the dispensing agent which is air-pore forming and a resin so that the concrete is hydrophobic and not spontaneously miscible with water.

The Double Patenting Rejection

Submitted is a terminal disclaimer and a copy of the assignment which has been sent to the assignment branch for recordal. Also submitted is a Declaration showing that the application and reference were currently owned by the same party prior to the U.S. filing date so as to obviate the double patenting rejection.

The Rejection Under 35 USC 103

Reconsideration is respectfully requested of the rejection of the claims as presently amended under 35 USC 103 as being unpatentable in view of Patent No. 6,022,407 in view of any one of Sano et al and Spangle or Sano alone.

Claim 2 which has been considered as allowable has been incorporated into claim 1. Claims 3-6 depend upon newly amended claim 1 for their patentability.

Reconsideration is respectfully requested of the rejection of claims 7-11 under 35 USC 103 as being impatentable over Patent No. 6,022,407 in view of Kolar et al or Chatterji, or Spangler.

Patent No. 6,022,407 does not teach a cement having a particle distribution whereby at least 95% pass a screen with a mesh size of 32 to 64 μm in combination with a dispensing agent which is air-pore forming in an amount so to produce a pore volume of at least 20% by volume.

Kolar et al do not relate to a foamed concrete. The presence of pore formation is critical in the present invention, Kolar et al do not teach the use of a dispensing agent which would result in the desired pore formation. In fact, the combination of Kolar et al and Patent No. 6,022,407 would result in a decrease in pore formation and air bubbles which are essential to achieving the desired hydrophobic character. An object of the invention is not to obtain a cement which exhibits high strength but to practice the method of claim 1.

Chatterji does not teach a pore volume of at least 20% by volume. A foaming agent is utilized together with a foam stabilizer. Chatterji utilizes a dispensing agent to promote higher strength set. Also, Chatterji teaches the use of latex rather than resins.

The addition of Spangle to Chatterji would not result in the aerated cement presently claimed without the particular dispensing agent of the present invention. Each of Spangle and Chatterji require a foaming agent to release a gas. In contrast, the present composition is sheered to create air bubbles. A different type of dispersing agent is needed in Chatterji which is utilized "to facilitate the use of lower quantities of water and to promote higher set strength." (See Chatterji, column 10, lines 16-25).

Spangle at column 4, lines 29-32 state that dispersing agents are not employed because they degrade the foam. However, dispersing agents are critical for the air bubbles in the present invention.

Consequently, Chatterji and Spangle relate to a technology requiring foaming agents but not the dispersing agents of the present invention.

Moreover, thickeners such as bentonite and attapulgite are not used (see column 4, lines 25-27of Spangle).

It is respectfully submitted that the teachings of foamed cement utilizing foaming agents differs from foamed cement created by sheering so that the teachings of the references cannot be applied to teachings of foamed cement such as taught in Patent No. 6,022,407 or the present application.

Reconsideration and favorable action are earnestly solicited.

If there are any issues still remaining, the Examiner is requested to telephone the undersigned.

Respectfully submitted,

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